

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32 (2)(b))

Description of case

Case No. A.O. No. 1362 of 2001 with 24 Cases

National Insurance Company Ltd ----- Appellant

VS

Raghubir Singh & others ----- Respondents

Date of decision: 21-08-04

For the approval of:

Hon'ble Mr. Justice P.C. Verma.

Hon'ble Mr. Justice B.S. Verma

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)
- Whether the reporters be allowed to see the judgment? ()

Court No.2

In the High Court of Uttaranchal, at Nainital.

- 1- A.O. No. 1362 /2001** (Old No. 670 of 1996)
National Insurance Company Ltd Appellant

Versus

Raghubir Singh and two othersRespondents.

- 2- A.O. No. 1382/2001** (Old No. 6691 of 1996)
National Insurance Company Ltd Appellant.

Versus

Raghubir Singh and two othersRespondents.

- 3- A.O. No. 19 /2002**
National Insurance Company Ltd Appellant.

Versus

Master Raju Majumdar & three Ors.Respondents.

- 4- A.O.No. 128/2001** (Old No. 1020 of 1996)
National Insurance Company Ltd... Appellant.

Versus

Belam and three othersRespondents.

- 5- A.O.No. 248/2001** (Old No. 618 of 1996)
National Insurance Company Ltd. Appellant.

Versus

Smt.Asha and four othersRespondents.

- 6- A.O.No. 149/2001** (Old No. 619 of 1996)
National Insurance Company Ltd..... Appellant.

Versus

Smt.Amarjeet Kaur & four others.Respondents.

7- A.O.No. 1604/2001 (Old No.39 of 1997)
National Insurance Company Ltd Appellant.

Versus

Smt. Barfi Devi & five Ors. Respondents.

8- A.O.No.451/2001 (Old No.76/1997)
National Insurance Company Ltd Appellant.

Versus

Smt.Rajendri Devi and four Ors. Respondents.

9- A.O.No.587/2001 (Old No.78/1997))
National Insurance Company Ltd Appellant.

Versus

Smt. Sushila Devi and seven Ors Respondents.

10- A.O.No. 585/2001 (Old No. 77 of 1997)
National Insurance Company Ltd..... Appellant.

Versus

Prem Narain and two Ors. Respondents.

11- A.O.No. 287/2003
National Insurance Company Ltd. Appellant.

Versus

Km.Anita & four Ors. Respondents.

12- A.O.No. 130 of 2003
National Insurance Company Ltd. Appellant.

Versus

Smt.Nasira Khatoon & six Ors. Respondents.

13- A.O.No. 1503 of 2001 (Old No.682 of 1996)
National Insurance Company Ltd. Appellant.

Versus

Smt.Geeta Devi and six Ors. Respondents.

14- A.O.No. 1397 of 2001 (Old No.674 of 1996)
National Insurance Company Ltd Appellant.

Versus

Smt. Munni Dhaundiyal & five Ors.Respondents.

15- A.O.No. 316 of 2003
National Insurance Company Ltd Appellant.

Versus

Smt.Rita Biswas and four Ors.Respondents.

16- A.O.No. 52 of 2002
National Insurance Company Ltd Appellant.

Versus

Smt.Shyamali Sardar & three Ors.Respondents.

17- A.O.No. 269 of 2001 (Old No.665 of 1996)
National Insurance Company Ltd. Appellant.

Versus

Smt.Usha Gaur & five Ors.Respondents.

18- A.O.No. 315 of 2003
National Insurance Company Ltd. Appellant.

Versus

Km.Rangbala Naskar & four Ors.Respondents.

19- A.O.No. 10-D of 2004
National Insurance Company Ltd. Appellant.

Versus

Smt.Chitra Nathak and two Ors.Respondents.

20- A.O.No. 9-D of 2004
National Insurance Company Ltd. Appellant.

Versus

Sri Nirmal Mandal and four Ors.Respondents.

21- A.O.No.47 of 2002
National Insurance Company Ltd. Appellant.

Versus

Sri Shiv Kumar Biswas alias Sibbu
And two Ors.Respondents.

22- A.O.No. 48 of 2002
National Insurance Company Ltd. Appellant.

Versus

Smt.Sukuli Sardar & three Ors.Respondents.

23- A.O.No. 50 of 2002
National Insurance Company Ltd. Appellant.

Versus

Sri Nirmal Biswas & two Ors.Respondents.

24- A.O.No. 49 of 2002
National Insurance Company Ltd. Appellant.

Versus

Sri Brijendra Mandal & two Ors.Respondents.

AND

25- A.O.No. 51 of 2002
National Insurance Company Ltd. Appellant.

Versus

Smt.Sukuli Sardar & six Ors.Respondents.

Sri Prabhat Pandey, learned counsel for the appellant-National Insurance Company.
Sri Sandeep Tandon, learned counsel for respondent-owner of the vehicle in
question.

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Dated: 21st Aug.,2004

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

These appeals have been filed by the
appellant/respondent-National Insurance Company against

the separate awards made by the Motor Accident Claims Tribunal, Uttarkashi, on different dates in Motor Accident Claim Case nos. 1/1996, 18/1995, 21/1995, 14/1996, 4/1996, 6/1996, 7/2001, 31/1995, 32/1995, 12/1996, 14/2001, 32/2001, 15/1996, 23/1995, 8/2000, 19/2000, 20/1996, 20/2000, 10/2000, 40/2001, 18/2000, 16/2000, 9/2000, 15/2000 and 6/2001 respectively.

2- At the request of learned counsel for the appellant all these appeals are being heard together and decided by one and common order as the facts and question involved are common.

3- In some of the appeals applications under Sec.5 of the Limitation Act are pending for disposal. The learned counsel for the respondent has no objection, if such applications are allowed. Hence applications under Sec. 5 of the Limitation Act are allowed. The delay in filing the appeals, in which the applications are pending, is condoned.

4- Brief facts giving rise to these appeals are that on 20.9.1995, bus No. UAW 9996 was coming from Gangotri to Uttarkashi. At about 8.30 a.m. when the said bus reached near Dabrani, it met with an accident and fell down into the river Bhagirathi in which several persons died at the spot and several received fatal injuries. The bus was owned by opposite party- Rajendra Singh and was insured with Opp.party-National Insurance Company. It was alleged that it was being driven by opposite party- Bachan Singh rashly and negligently at the time of accident.

5- The learned Tribunal framed the necessary issues and after deciding the same in favour of the claimants, decreed the claim petitions filed by the claimants against the Opp. party-National Insurance

Company accordingly. Feeling aggrieved, the Opp. party-National Insurance Company has come up in these appeals.

6- The learned counsel for the appellant challenged the impugned judgments under appeals on the ground that there was a breach of policy inasmuch as the vehicle bus No. UAW 9996 was insured as passenger vehicle and upto 41 passengers including driver and conductor. In some of the appeals the ground taken by Insurance Company is that bus in question No. UAW 9996 was carrying about 61 passengers and in some of the appeals the ground taken is that bus in question was carrying more than 100 passengers, while from the magisterial inquiry it stands established that 5 passengers were dead, 33 passengers were missing and 23 passengers were injured. The learned counsel for the appellant submitted that the overloading is a breach of policy as provided in sub-rule (v) of Rule 67 of the Uttar Pradesh Motor Vehicles Rules, 1998 which reads as under:-

“that the maximum number of persons or maximum weight of luggage that may be carried in the vehicle covered by the permit shall not exceed as given in the certificate of registration.”

7- Since there was breach of policy, therefore this ground was available to the appellant under sub clause (c) of sub clause (i) of clause (a) of sub section (2) of Section 149 of the Motor Vehicles Act, 1988 (***in short the Act***). The learned counsel for the appellant placed reliance to the provision of Sec. 66 of the Act and submitted that on account of this breach of policy the owner of the vehicle was prohibited to use or permit the use of vehicle as transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or

countersigned by a Regional or State Transport Authority. In view of this prohibition created by Sec. 66 of the Act the appellant could not use the motor vehicle even for the purpose for which the permit was granted. Therefore, the vehicle was not being used for the purpose for which the permit was granted. Thus, the ground under sub clause (c) of sub clause (i) of clause (a) of sub-section (2) of Section 149 of the Act is available to challenge the liability fastened upon the appellant beyond the passengers insured under the permit.

8. We think it appropriate to quote the definition of “permit” given in the Motor Vehicles Act, 1988 which reads as under:-

“permit” means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle.”

9. It is clear from the definition that the permit is issued by the authority prescribed authorising the use of a motor vehicle as a transport vehicle. In the instant case the vehicle in question was a passenger vehicle.

10. In order to appreciate the aforesaid submissions we think it also appropriate to quote sub section (2) of Sec. 149 of the Act, which reads as under:-

“ No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

- (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-
 - (i) a condition excluding the use of the vehicle-
 - (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or
 - (b) for organised racing and speed testing, or
 - (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or
 - (d) without side-car being attached where the vehicle is a motor cycle; or
 - (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
 - (iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or
- (b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.”

11. From perusal of above, it is clear that the Section starts from the word, **‘no’** which creates a prohibition for raising the grounds of appeal by the Insurance Company, except on the grounds mentioned in clause (a) or clause (b) of sub-section (2). Sub clause (c) of sub clause (i) of clause (a) of sub-section (2) of Sec. 149 specifically provides for the purpose not allowed by the permit under which the vehicle is used. A motor vehicle is used only for two purposes as comes out from Sec. 66 of the Act itself; one for carrying

the passengers another for carrying the goods. The ground under the provision of sub clause (c) aforesaid shall be available to the insurer only in case, if goods are being carried by the passenger vehicle or passengers are being carried by a goods vehicle beyond the number mentioned in the permit. Then the use will be for the purpose not allowed by the permit. The breach of all the conditions of permit is not the ground available to the insurer to file an appeal. Only those conditions which are enumerated under clause (a) of sub section (2) aforesaid are only the grounds to be raised by the insurer as grounds of appeal.

12. The Hon'ble Supreme Court in Case of ***B.V. Nagaraju versus Oriental Insurance Co. Ltd., Divisional Officer, Hassan, reported in (1996) 4 Supreme Court Cases, Page 647***, while considering the liability of Insurance Company-insurer for payment of compensation to the passengers which were travelling in a goods vehicle beyond the number of passengers held that it was not a fundamental breach. Therefore, the Insurance Company was held liable for payment of compensation. In the present case admittedly, the permit of the vehicle was granted for use of carrying the passengers and accident took place when the vehicle was carrying the passengers. Therefore, this ground is not available to the appellant under sub clause (c) of sub clause (i) of clause (a) of sub-section (2) of Section 149 of the Act.

13. Learned counsel for the appellant submitted that the facts of the case of ***B.V.Nagaraju Vs. Oriental Insurance Company Ltd. (supra)*** are not applicable in the facts and circumstances of the present case as that was a case where breach was not so fundamental but here in the present case the breach is fundamental. The argument advanced by the learned counsel for the appellant is

misconceived. We have quoted above the law laid down by the Apex Court in **B.V.Nagaraju's** case (supra). In that case the goods vehicle was carrying the passengers beyond the permitted limit. Here in the present case, the permit of the vehicle was for carrying the passengers. Therefore, no ground is available to the appellant under sub clause (c) of sub clause (i) of clause (a) of sub-section (2) of Sec. 149 of the Act.

14. Lastly, the learned counsel for the appellant submitted that under clause (b) of Section 170 of the Motor Vehicles Act, 1988 all the grounds are available to the appellant in appeal which provides the right to contest the claim on any of the grounds the claim has been made. Therefore, the appellant can press this appeal on the grounds on which the insured could press the appeal. The learned counsel for the appellant relied on **Para-9** of the judgment of Division Bench of this Court in **Appeal No. 295 of 2002, United India Insurance Company Ltd. versus Smt.Gurjeet Kaur Deol and others, decided on 23rd Sept., 2003** which is quoted as under:-

“The only issue is whether Appeal under section 173 of Motor Vehicles Act filed by Insurance Company is non-maintainable. We find merit in the preliminary objection raised on behalf of the claimants. In the above judgment of the Supreme Court, it has been held that the Insurance Company can defend the claim petition only on the ground of breach of conditions of policy or on the ground that the policy is void for reasons given in section 149(2) of the Act. That the Insurance Company cannot avoid its liability on any grounds except those mentioned in section 149(2) of the Act. That the insurer has no right to file an appeal to challenge the quantum of compensation or the finding of the Tribunal as regards negligence or contributory negligence of the offending vehicle except in cases where section 170 is applicable. That, in cases where in the course of inquiry, the Tribunal is satisfied that there is collusion between the claimant and the person against whom the claim has been

made or if the Tribunal is satisfied in the course of inquiry that the person against whom the claim has been made has failed to contest the claim, the Tribunal may for reasons to be recorded in writing implead the insurer and in that case it is permissible for the insurer to contest the claim on the grounds which are available to the insured. Therefore, where conditions precedent to section 170 are satisfied and the award is adverse to the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence on the part of the offending vehicle.”

15. A perusal of the aforesaid judgment itself shows that where the conditions precedent to Section 170 of the Act are satisfied and the award is adverse to the insurer, the insurer has right to file an appeal challenging the quantum of compensation or negligence or contributory negligence on the part of the offending vehicle. As we have factually noticed in this appeal that the conditions precedent to Sec. 170 are not available to the appellant in view of the fact that the appellant was already as party. They were contesting the claim petitions. The application under Sec. 170 of the Act for permission has to be bona fide and filed at the stage when the insured was required to lead his evidence. The Apex Court, while considering this issue has categorically held in **Para-31** of the case **National Insurance Co. Ltd. Chandigarh versus Nicolletta Rohtagi** reported in **(2002) 7 Supreme Court Cases, page 456** that,

“We have already held that unless the conditions precedent specified in Section 170 of 1988 Act is satisfied, Insurance Company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not, implead the Insurance Company to contest the claim in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the

ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-section (2) of Section 149 of 1988 Act. But such application for permission has to be *bona fide* and filed at the stage where the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer *res integra* that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.”

16. Therefore, this ground of challenge is also misconceived and is hereby rejected.

17. We do not find any merit in these appeals. All these appeals are, accordingly, dismissed. No order as to costs. Amount, if deposited in these cases by the appellant in this Court, shall be remitted to the Tribunal concerned by the Registry within two months from today.

(B.S.Verma,J.)

(P.C.Verma,J.)

P.Singh